

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 19-0062V

UNPUBLISHED

JEFFREY POLASKE, as Administrator
of the Succession of LEAH JEANENE
POLASKE,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: July 6, 2021

Special Processing Unit (SPU); Joint
Stipulation on Damages; Influenza
(Flu) Vaccine; Guillain-Barre
Syndrome (GBS)

Howard Scott Gold, The Gold Law Firm, LLC, Wellesley Hills, MA, for Petitioner.

Alexa Roggenkamp, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION ON JOINT STIPULATION¹

On January 15, 2019, Leah Polaske, now deceased, filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*² (the “Vaccine Act”). On August 29, 2019, I ordered the caption amended to substitute the administrator of her estate, Jeffrey Polaske, as Petitioner. ECF No. 25. Petitioner alleges that Leah Polaske suffered Guillain-Barré syndrome (“GBS”) which meets the definition for Table GBS and was caused-in-fact by the influenza (“flu”) vaccine she received on January 18, 2017. Petition at 1 ¶¶ 2, 11; Stipulation, filed at July 6, 2021, ¶¶ 1-2, 4. “Respondent denies that the flu vaccine caused Ms. Polaske to develop GBS, or any other injury or condition, or her death.” Stipulation at ¶ 6.

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). **This means the decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all “§” references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

Nevertheless, on July 6, 2021, the parties filed the attached joint stipulation, stating that a decision should be entered awarding compensation. I find the stipulation reasonable and adopt it as my decision awarding damages, on the terms set forth therein.

Pursuant to the terms stated in the attached Stipulation, **I award** the following **the following compensation**:

1. **A lump sum payment of \$125,000.00 in the form of a check payable to Petitioner as the legal representative of the estate of Leah Jeanene Polaske.**
2. **A lump sum payment of \$123,721.57, representing compensation for satisfaction of the Medicaid lien, for vaccine-related services rendered on behalf of Ms. Polaske, in the form of a check payable jointly to Petitioner and:**

**The Rawlings Company
ATTN: Joshua T. Piper,
Reference No. 105059713,
P.O. Box 2000
La Grange, KY 40031-2000.**

Petitioner agrees to endorse the check to The Rawlings Company. The clerk of the court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Brian H. Corcoran
Brian H. Corcoran
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

JEFFREY POLASKE, as Administrator of the
Succession of LEAH JEANENE POLASKE,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

No. 19-62V

Chief Special Master Corcoran
ECF

STIPULATION

The parties hereby stipulate to the following matters:

1. Leah Jeanene Polaske ("Ms. Polaske") filed a petition for vaccine compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §§ 300aa-10 to -34 (the "Vaccine Program").¹ The petition seeks compensation for injuries allegedly related to Ms. Polaske's receipt of an influenza ("flu") vaccine, which is a vaccine contained in the Vaccine Injury Table (the "Table"), 42 C.F.R. § 100.3 (a).

2. Ms. Polaske received the flu vaccine on January 18, 2017.

3. The vaccination was administered within the United States.

4. Petitioner alleges that Ms. Polaske sustained the onset of Guillain-Barre Syndrome (GBS) within the Table time period after receiving the flu vaccine, and in the alternative, alleges that the flu vaccine actually caused her alleged GBS.

5. Petitioner represents that there has been no prior award or settlement of a civil action

¹ Ms. Polaske died on January 31, 2019, and by order dated August 29, 2019, Jeffrey Polaske ("petitioner"), was substituted as petitioner.

for damages on Ms. Polaske's behalf as a result of Ms. Polaske's alleged injury or her death.

6. Respondent denies that the flu vaccine caused Ms. Polaske to develop GBS, or any other injury or condition, or her death.

7. Maintaining their above-stated positions, the parties nevertheless now agree that the issues between them shall be settled and that a decision should be entered awarding the compensation described in paragraph 8 of this Stipulation.

8. As soon as practicable after an entry of judgment reflecting a decision consistent with the terms of this Stipulation, and after petitioner has filed an election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), the Secretary of Health and Human Services will issue the following vaccine compensation payments:

- a. A lump sum of \$ \$125,000.00, in the form of a check payable to petitioner as legal representative of the estate of Leah Jeanene Polaske; and
- b. A lump sum of \$123,721.57, which amount represents reimbursement for a Medicaid lien for alleged vaccine injury-related services rendered on behalf of Ms. Polaske, in the form of a check payable jointly to petitioner and The Rawlings Company, ATTN: Joshua T. Piper, Reference No.: 105059713, PO Box 2000, La Grange, KY 40031-2000.

Petitioner agrees to endorse this check to The Rawlings Company.

These amounts represent compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a) for injuries related to Ms. Polaske's receipt of the flu vaccine.

9. As soon as practicable after the entry of judgment on entitlement in this case, and after petitioner has filed both a proper and timely election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), and an application, the parties will submit to further proceedings before the special master to award reasonable attorneys' fees and costs incurred in proceeding upon this petition.

10. Petitioner and his attorney represent that compensation to be provided pursuant to this Stipulation is not for any items or services for which the Program is not primarily liable under 42 U.S.C. § 300aa-15(g), to the extent that payment has been made or can reasonably be expected to be made under any State compensation programs, insurance policies, Federal or State health benefits programs (other than Title XIX of the Social Security Act (42 U.S.C. § 1396 et seq.)), or by entities that provide health services on a pre-paid basis.

11. Payment made pursuant to paragraph 8 of this Stipulation and any amounts awarded pursuant to paragraph 9 of this Stipulation will be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

12. Petitioner represents that he presently is, or within 90 days of the date of judgment will become, duly authorized to serve as the legal representative of Ms. Polaske's estate under the laws of the State of Louisiana. No payments pursuant to this Stipulation shall be made until petitioner provides the Secretary with documentation establishing his appointment as legal representative of Ms. Polaske's estate. If petitioner is not authorized by a court of competent jurisdiction to serve as legal representative of the estate of Ms. Polaske at the time a payment pursuant to this Stipulation is to be made, any such payment shall be paid to the party or parties appointed by a court of competent jurisdiction to serve as legal representative of the estate of Ms. Polaske upon submission of written documentation of such appointment to the Secretary.

13. In return for the payments described in paragraphs 8 and 9, petitioner, in his individual capacity, and as legal representative of the estate of Leah Polaske, on his own behalf, and on behalf of Ms. Polaske's heirs, executors, administrators, successors or assigns, does forever irrevocably and unconditionally release, acquit and discharge the United States and the Secretary of Health and Human Services from any and all actions or causes of action (including

agreements, judgments, claims, damages, loss of services, expenses and all demands of whatever kind or nature) that have been brought, could have been brought, or could be timely brought in the Court of Federal Claims, under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 et seq., on account of, or in any way growing out of, any and all known or unknown, suspected or unsuspected personal injuries to or death of Ms. Polaske resulting from, or alleged to have resulted from, the flu vaccination administered on January 18, 2017, as alleged by petitioner in a petition for vaccine compensation filed on or about January 15, 2019, in the United States Court of Federal Claims as petition No. 19-62V.

14. If the special master fails to issue a decision in complete conformity with the terms of this Stipulation or if the Court of Federal Claims fails to enter judgment in conformity with a decision that is in complete conformity with the terms of this Stipulation, then the parties' settlement and this Stipulation shall be voidable at the sole discretion of either party.

15. This Stipulation expresses a full and complete negotiated settlement of liability and damages claimed under the National Childhood Vaccine Injury Act of 1986, as amended, except as otherwise noted in paragraph 9 above. There is absolutely no agreement on the part of the parties hereto to make any payment or to do any act or thing other than is herein expressly stated and clearly agreed to. The parties further agree and understand that the award described in this Stipulation may reflect a compromise of the parties' respective positions as to liability and/or amount of damages, and further, that a change in the items of compensation sought, is not grounds to modify or revise this agreement.

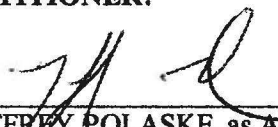
16. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that Ms. Polaske sustained a GBS Table injury or that the flu vaccine caused Ms. Polaske to develop GBS, or any other injury, or caused her death.

[illegible]


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Respectfully submitted,

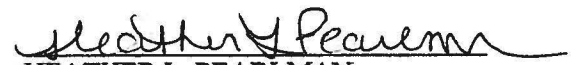
PETITIONER:


JEFFREY POLASKE, as Administrator of the
Succession of LEAH JEANENE POLASKE

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